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EXAMINER

HALE, GLORIA M

ART UNIT

PAPER NUMBER

3765

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 12

Application Number: 09/944,612

Filing Date: September 4, 2001

Appellant(s): Ronald Boser

Myron Amer

For Appellant

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EXAMINER'S ANSWER

This is in response to the appeal brief filed August 19, 2002 and Supplemental Brief filed September 25, 2002.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

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(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that the Grouping of the Claims does not apply.

Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

2,613,365

FAIRBANKS et al

10-1952

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fairbanks et al (2,613,365).

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In regard to claim 1, Fairbanks ('365) discloses a brassiere (10) which includes a first construction wherein the bra (10) is worn with a sheath (25) and underwire (30) or a second construction without the sheath (25) and underwire (30). Additionally, the bra can be worn with the sheath attached thereto and with the underwire (30) removed from the sheath (25) which can then be considered to be a "third construction".

The bra of Fairbanks et al includes a bra 910) with breast cup pockets (12,13) with a tape (20) as seen in figure 4, sewn under each breast along each cup edge and therefore permanently adhered to a part of the bra. The tape (20) further includes female snap fasteners (21) therein which forms the first construction of the bra (10) which is worn without the sheath (25) and underwire (30). Fairbanks et al also discloses the bra (10) to be worn in he second construction including a sheath (25) with an underwire (20) therein which is u-shaped for each cup as seen in figures 1, 2 and 5. The sheath 25 is formed of two strips of material (27,28), one of which (28) is a plush material which faces the inside of the garment to provide a cushioning effect to the wearer's skin. The sheath (25) also includes male snap fastener components (26) which correspond to the female fastener components (21) for fastening the sheath (25) with the underwire (30) therein to the bra tape (20) along it's entire length. (See Fairbanks et al., col. 3, lines 21-70).

However, Fairbanks et al does not specifically disclose the use of VELCRO hook-type and VELCRO loop - type fastener components to attach an underwire/sheath to the bra. The Examiner takes Official Notice that it is well known to substitute different types of known fasteners such as snaps with male and female snap components, buttons and button holes and hooks and eyes etc. with VELCRO hook and loop fasteners for greater ease in fastening and unfastening and to achieve other known benefits of the VELCRO hook and loop material such as its fabric conformity to the contours of the wearer when used in garment construction, comfort to the wearer and it's aesthetic values. Accordingly, it would have been obvious to one having

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ordinary skill in the art at the time the invention was made to modify the bra of Fairbanks et al to substitute the male (26) and female (21) snap fastener components with male (hook) and female (loop) fastener components of VELCRO or any other hook and loop brand material wherein a male snap component is substituted with a male hook material and a female snap component is substituted with a female (loop) material since such substitution is well known in garment manufacturing in order to provide greater ease in fastening and unfastening a garment; comfort to the wearer since the VELCRO material hook and loop components bend to the contours of the wearer and also for its aesthetic value in garment construction. By using the loop material which is a female component in place of a female snap component (21), the loop material will face the skin of the wearer and it's plush material surface is similar to the "plush" material Fairbanks et al used to construct the tape (28) which faces the wearer as discussed above and in col. 3, lines 49-53 of Fairbanks et al and as claimed in lines 13-15 of claim 1 of the present application. The bra of Fairbanks et al is wearable with the tape (20) which is sewn or otherwise permanently attached to the bra body (11) which would be the "1st construction". Lines 3-8 of col. 1 of Fairbanks et al, states that the wire frames (30) and sheath (25) can be removed for "cleaning and other purposes" wherein many wearer's of brassieres would consider "other purposes" to include "comfort" and to remove an "ill-fitting underwire" such as indicated in lines 9-20 of col. 1. Therefore, if the underwire is not comfortable to the wearer the sheath (25) with the underwire (30) therein can be un-snapped from the bra and the bra can remain on the wearer. Additionally, the bra can be laundered in a machine and the sheath and underwire can be washed by hand more delicately to avoid damage to the bra, underwire and sheath. The removal of the sheath (25) with the underwire by unsnapping is easier than removing the wire (30) from the sheath (25).

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(11) Response to Argument

In regard to applicant's remarks on page 5 of the 1-8-02 response, paper #4, applicant states that the bra is not worn when it is laundered and that this is indicated in Fairbanks et al in col. 2, lines 43-45. However, it does not appear that Fairbanks et al indicates that the bra is not worn when the underwire is removed. The bra may still be worn when the underwire and sheath ~~and~~ ^{are} removed for laundering. It just indicates that the bra can be "safely laundered" when the underwire is removed. The first lines of the Fairbanks patent, col. 1, lines 3-8, clearly state that the "user" decides how to wear the bra and to detach the underwire for "other purposes". "Other purposes" being limited only by the imagination of the wearer. When substituting the male and female fasteners of Fairbanks et al with comparable male and female fastener components of a hook and loop fastener the loop fastener would take place of a female snap fastener and therefore the female or loop material is a plush material which would provide comfort to a wearer as indicated in col. 3, lines 51-54 wherein a plush material provides a cushioning effect to a wearer. The use of the hook and loop fastener components as a substitute for other male/female fasteners and even zipper tapes is widely well known in garment construction as disclosed in the Gershman reference attached.

In regard to page 5 of the "Appeal Brief Arguments" applicant is limiting "other purposes" to laundering type processes. However, the Examiner disagrees and considers "other purposes" to include any other purpose a wearer of a brassiere would choose to not wear an underwire and which comfort would be considered to be the number one reason to remove an underwire from a bra. Other obvious reasons for wearing or not wearing is "fashion" and the setting in which the brassiere is to be worn.

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In regard to the comments concerning col. 2, lines 1-10, the examiner considers the removal of the underwire (30) from the sheath (25) as being a third construction option of wearing the bra. The first being without the sheath and underwire; the second being with the sheath without the underwire and wherein the placement or removal of any of the components (25) and (30) is at the selection of the wearer for any known reason for "other purposes" as discussed above. Many wearers would consider comfort as being the most important reason or purpose to remove an underwire from a bra.. The remaining sheath would provide support to the wearer with the extra fabric thickness and the conformation of the U-shape under the breast.

In response to page 5 of applicant's "First" remarks, Fairbanks et al discloses the use of snaps which were the most logical fastener choice during the time of the Fairbanks et al invention since hook and loop fasteners were not available in 1949 and were not widely used at the time and the time of filing of the Fairbanks et al invention. Since the ~~date of Gershman~~ late 1950's, the substitution and use of hook and loop fasteners has been widely known. When substituting a hook and loop fastener component for a snap component a short piece of hook and loop material, the same size of each snap component, may be utilized in place of each snap component. Applicants claim does not state that the VELCRO hook and loop components are in a "continuous strip configuration" or without breaks in the hook and loop material components strips. Aligning the hook and loop piece components is no more difficult than aligning extended strips especially since the curvature of the underwire must be properly aligned to the curvature of the breast cup portion. The pieces being a guide to the proper connection and providing a more accurate alignment than an elongated hook and loop fastener component construction. The "VELCRO" loops are the female component of a fastener and take the place of the non-protruding or "recessed" component of a snap fastener. The male component is the protruding portion which snaps into the female portion recess.

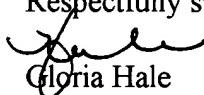
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Therefore, one of ordinary skill in the art at the time the invention was made would substitute a loop fastener of a hook and loop fastener for a female snap fastener component and a hook for a male or protruding snap fastener. (The Gershman article (attached) and the "Living Easier with VELCRO" article part (2) both disclose the use of VELCRO with the fleece side facing the wearer and the substitution of other fasteners with VELCRO.)

In conclusion, it would have been obvious to one having ordinary skill in the art to substitute the snap fasteners of the Fairbanks et al bra with corresponding hook and loop fastener components as discussed above for greater ease in fastening and unfastening the underwire sheath to the bra, as desired by the wearer and to thereby provide greater comfort to the wearer as desired.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Gloria Hale

Primary Patent Examiner- AU 3765

December 6, 2001

Conferees: Amy Vanatta- Primary Patent Examiner- AU 3765

John Calvert- Supervisory Primary Patent Examiner- AU 3765

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Attachment- Gershman Article

Living is Easier with VELCRO (2).